

**IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
WEST VIRGINIA, AT MARTINSBURG**

DALE BERNARD BEARD, JR.,

Plaintiff,

v.

**CIVIL ACTION NO.: 3:23-CV-193
HONORABLE GINA GROH**

**DANIEL E. SMITH, individually, and
ADAM ALBAUGH, individually,**

Defendants.

**DEFENDANTS, DANIEL E. SMITH AND ADAM ALBAUGH'S
MOTION FOR SUMMARY JUDGMENT**

COMES NOW Defendants, Daniel E. Smith and Adam Albaugh, ("Defendants"), by Counsel Keith C. Gamble and the law firm of Pullin, Fowler, Flanagan, Brown and Poe, PLLC pursuant to Rule 56 of the Federal Rules of Civil Procedure and hereby present this Motion for Summary Judgment. In further support thereof, Defendants rely on their Memorandum of Law in Support of their Motion for Summary Judgment and state and aver as follows:

1. Plaintiff's false Arrest claim should be dismissed as a matter of law;
2. Plaintiff's Count Two – Malicious Prosecution, should be dismissed as there was probable cause for Plaintiff's arrest;
3. Plaintiff's First Amendment Violation claims should be dismissed;
4. Plaintiff's § 1983 claims against the Defendants must be dismissed under the well-established qualified immunity doctrine;

- a. Plaintiff's Fourth Amendment Claims for False Arrest and Malicious Prosecution Fail as A Matter of Law Because Plaintiff's Arrest for Obstruction and drug charges were Supported by Probable Cause; and,
- b. Plaintiff's First Amendment Claims Fail as A Matter of Law Because the Defendants did not violate a clearly established right of Plaintiff, nor would a reasonable officer believe that such conduct was unlawful.

WHEREFORE, the Defendants, Daniel E. Smith and Adam Albaugh, for the reasons stated above and more clearly detailed in Defendants' Memorandum of Law in Support, respectfully request that this Honorable Court grant this Defendants' Motion for Summary Judgment, and for such other and further relief as this Court deems just and proper.

**Defendants, Daniel E. Smith and Adam
Albaugh,
By counsel:**

/s/ Keith C. Gamble

Keith C. Gamble, WV State Bar No. 7971

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CERTIFICATE OF SERVICE

The undersigned, counsel of record for Defendants, does hereby certify on this 25th day of October, 2024, that a true copy of the foregoing “***DEFENDANTS, DANIEL E. SMITH AND ADAM ALBAUGH’S MOTION FOR SUMMARY JUDGMENT***” was filed and served via the CM/ECF filing system, as follows:

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/s/ Keith C. Gamble
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